

NOV 15 2012

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Article Number: 7011 0470 0002 2746 5194

Mr. Steven Smith  
President  
Agro-Gro Marketing, Inc.  
HC 4 Box 333  
Doniphan, Missouri 63935

Dear Mr. Smith:

**NOTICE OF WARNING**

This Notice of Warning is issued pursuant to Section 9(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136. On or about November 7, 2012, a representative of the U.S. Environmental Protection Agency conducted a review of the Agro-Gro Marketing, Inc. websites: [www.agrigro.com](http://www.agrigro.com) and [www.bountiful-harvest.com](http://www.bountiful-harvest.com) to determine compliance with FIFRA and related regulations in the Code of Federal Regulations.

Under FIFRA, a pesticide is defined as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant. FIFRA defines plant regulators as substances intended to accelerate or retard the growth of plants, or for otherwise altering the behavior of plants or their produce. Substances considered to be plant regulators may include hormone additives intended to stimulate plant root growth or fruiting, such as gibberellins, auxins, and cytokinins derived from seaweed. Products containing these additives are often marketed as fertilizers, but the resultant mixture and any claims that the mixture is only a fertilizer do not exempt the products from regulation as pesticides, including the requirement that these products must be registered with the EPA.

Our review of your company's websites documents that the following unregistered pesticide products are being marketed by your company, in violation of FIFRA: AGRI-GRO BIO-STIMULANT, FOLIARBLEND BIO-STIMULANT, IGNITES<sup>2</sup>, TURF FORMULA NUTRIENT ACTIVATOR, and BOUNTIFUL HARVEST BIO-STIMULANT. The table below notes examples of pesticidal claims and/or listed ingredients for each product. Please note, this table lists a representative sampling only of the evidence collected indicating that the products are illegal pesticides, and is not intended to be exhaustive:

CONCURRENCE: H:\WWPD\TOPE\TOPE 2012 Correspondence\Leshar\NOW Letters\NOW – Agro-Gro Marketing, Inc. – Doniphan, MO – 11-14-12; SDK – 7848 – 11-14-12					
NAME	Leshar	Teter			
DIV/BRANCH	WWPD/PEST	WWPD/PEST			
SIGN	<i>Mark Leshar</i>	<i>REB</i>			
DATE	11/14/12	11/14/12			

Product Name	Pesticidal Claims/Ingredients
Agri-Gro Bio-Stimulant	<ul style="list-style-type: none"> <li>• Agri-Gro is a natural bio-stimulant</li> <li>• Increased root development</li> <li>• Reduce Disease and harmful Bacteria</li> <li>• ability of this product to reduce diseases</li> <li>• enhances the germination of most any seed and increases root growth and penetration by up to 50%</li> <li>• provides ... other growth stimulants not found in ordinary fertilizers.</li> <li>• Assists in seed germination and early plant growth</li> <li>• Improves development of root systems</li> <li>• the single greatest potential for Agri-Gro® may be in the control or reduction of this disease [Anthracnose], especially since there are few fungicides available that are effective in controlling it</li> <li>• Increase in root mass</li> </ul>
FoliarBlend Bio-Stimulant	<ul style="list-style-type: none"> <li>• establish larger root systems with stronger stalks</li> <li>• Improves germination, plant emergence and promotes vigorous root growth up to 50%.</li> <li>• Elevates the plants' natural defense mechanisms</li> <li>• minimizing disease, insect pressure and weather-related stress</li> <li>• reduction in fungicide use by 50% or more</li> <li>• increased root development</li> <li>• less disease and insect pressure</li> <li>• minimize disease and soil borne pathogens</li> <li>• Improves development of root system</li> <li>• Suppresses soil borne pathogens</li> <li>• supplies ... powerful growth stimulants</li> <li>• elevate the plant's natural defense system against a range of disease causing fungi, bacteria and viruses</li> <li>• reduce the impact of insect damage on crops</li> <li>• contains natural plant growth stimulants that trigger root growth and development</li> <li>• Levels of Fusarium colonization lowered by 66% (soybeans) 48% (corn)</li> <li>• Less symptoms of rice tungro virus &amp; raggedstunt virus</li> </ul>
IgniteS <sup>2</sup>	<ul style="list-style-type: none"> <li>• contains ... plant stimulants not found in ordinary fertilizers</li> <li>• increases ... root growth, ... and lowers disease pressure</li> <li>• establish larger root systems with stronger stalks</li> </ul>
Turf Formula Nutrient Activator	<ul style="list-style-type: none"> <li>• a scientifically balanced formula of micro-nutrients, carbohydrates, enzymes, amino acids, stabilized oxygen, and other growth stimulants</li> <li>• Turf Formula Bio-Stimulant Nutrient Activator boosts both plant and root growth</li> <li>• increases root mass and penetration</li> </ul>
Bountiful Harvest All Natural Bio-Stimulant	<ul style="list-style-type: none"> <li>• contains ... natural growth stimulants</li> <li>• contains natural rooting hormones</li> </ul>

- |  |  |
|--|--|
|  | <ul style="list-style-type: none"><li>• stimulates massive root development</li><li>• contains ... growth hormones</li></ul> |
|--|--|

The EPA has determined this Notice of Warning is an appropriate enforcement response to the violative products. Your options are to register these products with the EPA as pesticides or to ensure that the products formulation and/or claims are clearly non-pesticidal and therefore not subject to regulation under FIFRA. You may contact Sherada Hobgood, Registration Ombudsperson at 703-308-8893 for more information on the registration process or visit [www.epa.gov/pesticides/registrationkit](http://www.epa.gov/pesticides/registrationkit). Please be aware that merely removing pesticidal claims from a product's labeling or marketing website will not necessarily render a product not subject to FIFRA regulation, if the intended use of the product remains pesticidal or the active ingredients of the products are pesticidal in nature (e.g., growth hormones).

Please also be aware that, pursuant to the regulation at 40 C.F.R., § 152.6(f), certain products consisting of a mixture of plant hormones and nutrients are "vitamin hormone products" not considered to be plant regulators as defined under section 2(v) of FIFRA, provided certain criteria are met. Such criteria include the requirement that the product is not intended for use on food crop sites, and is labeled accordingly.

To conclude this matter, within 30 days of your receipt of this Notice, please submit a signed statement indicating the actions you have taken to ensure compliance with FIFRA. To the extent that you wish to assert that one or more of your products is a vitamin hormone product exempt from regulation as a plant regulator, please include an explanation of how the product so qualifies, and include a copy of the label for each such product for our review. Failure to correct this/these violation(s) could result in further enforcement including assessment of civil penalties up to \$7,500 per violation. Therefore, it is imperative that you submit accurate information regarding your facility's compliance efforts with FIFRA within 30 days.

Your company may be classified as a small business. Therefore, we encourage you to visit the EPA's website for access to an Information Sheet titled "U.S. EPA Small Business Resources" located at: [www.epa.gov/compliance/resources/publications/incentives/smallbusiness/smallbusresources.pdf](http://www.epa.gov/compliance/resources/publications/incentives/smallbusiness/smallbusresources.pdf). This document provides information regarding rights you may have under the Small Business Regulatory Enforcement Fairness Act and identifies contacts for assistance with small business issues. Please contact me to request a paper copy of this document.

This Notice of Warning does not preclude the EPA from taking additional enforcement action for other violations related to this Notice or future violations of FIFRA. Please contact me at (913) 551-7054 or [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov) if you need additional guidance or wish to discuss this notice.

Sincerely,  
Mark K. Leshner  
FIFRA Enforcement Officer  
Toxics and Pesticides Branch

cc: Paul Bailey, Missouri Department of Agriculture, (e-copy).  
Tim Tesreau, Registered Agent, Agri-Gro Marketing, Inc., HC 4 Box 333,  
Doniphan, MO, 63935  
bcc: Doug Jones, EPA Missouri Project Officer, (e-copy).  
Chris Dudding, EPA Region 7 Office of Regional Counsel, (e-copy).  
Company File, Agri-Gro Marketing, Inc., Doniphan, MO, Co. No. None.





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7**

11201 Renner Boulevard  
Lenexa, Kansas 66219

**NOV 15 2012**

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Doniphan, Missouri 63935

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Sincerely,

*Mark K. Leshner*

Mark K. Leshner  
FIFRA Enforcement Officer  
Toxics and Pesticides Branch

cc: Paul Bailey, Missouri Department of Agriculture, (e-copy).  
Tim Tesreau, Registered Agent, Agri-Gro Marketing, Inc., HC 4 Box 333,  
Doniphan, MO, 63935



7011 0470 0002 2746 5194

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com).

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

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Total P

Steven Smith  
President

Sent To

Street, A  
or PO B  
City, State, ZIP

Agro-Gro Marketing, Inc.  
HC 4 Box 333  
Doniphan, MO 63935

PS Form 3800, August 2006

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TOPE Rec'd NOV 26 2012

Steven Smith  
President  
Agro-Gro Marketing, Inc.  
HC 4 Box 333  
Doniphan, MO 63935

2. Article Number  
(Transfer from service label)

7011 0470 0002 2746 5194

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  ☐ Agent  
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery  
Steven L. Adkins

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

HC 4 Box 333  
Doniphan, MO. 63935

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes





**PHONE:**  
1-573-996-7384

**Agri-Gro Marketing, Inc.**  
HC 4 Box 333  
Doniphan, MO 63935  
1-800-881-8801

**FAX:**  
1-573-996-4769

December 19, 2012

US EPA Region 7  
11201 Renner Blvd  
Lenexa KS 66219

Dear Mr. Leshner,

In response to your notice of warning dated 11-15-2012 and following phone discussion, we attempted to contact Sherada Hobgood at 703-308-8893 for clarification and guidance. Three different days calls were made and voice mails left with no response. We again contacted you for help and was given the number for Rachel Holloman. We called Rachel who answered and was very helpful. We have sent her copies of all labels in question as well as your notice of warning and also a letter we found in our file from 1989 from Anne E. Lindsay, Director Registration Division, stating in response to our inquiry concerning registration that registration was not required as long as pesticidal claims were not made.

We have avoided making any such claims until research started by Dr. Bob Kremer of the USDA in 2006 began showing levels of bacteria responsible for fusarium in soybeans were lowered after the use of our micronutrient fertilizer. Since that time and before numerous studies have been conducted with results showing that essential mineral nutrients are effective in improving or lowering a plant's response to soil borne pathogens. For an exhaustive reference book containing the detailed interactions of mineral nutrition and plant disease please refer to a book published in 2007 by The American Phytopathological Society, 3340 Pilot Knob Road, St. Paul, MN. The title "Mineral Nutrition and Plant Disease" edited by Lawrence E. Datnoff, Wade H. Elmer, and Don M. Huber.

This peer reviewed reference book contains over 68 pathogen caused plant diseases in 38 different replicated crop studies demonstrating that applied manganese alone lowered the pathogen effect. These studies were conducted as early as 1953 to as recent as 2005.





16 different elements are examined and all studies from around the country since 1940 are culminated in this book. This research proves the claims we are making for our products and are a result from adding mineral nutrition to the soil to achieve improved plant health and growth.

For an example, certain strains of fusarium are known to attack the roots of soybeans and cotton in unbalanced soil. When populations of these strains are lowered from the application of manganese to levels required for soil balance, the roots then are able to increase in size and number allowing for increased plant growth due to lower levels of fusarium attacking the roots. Thus explaining increased root growth without using plant growth regulator materials or pesticides.

Due to the increased use of glyphosate materials, populations of fusarium have increased dramatically in US soils. Therefore, we are seeing an increased response to manganese nutrition in these areas. This is just one of many scenerarios that exist between simple mineral nutrition and plant responses.

The purpose of this letter is not to argue any point of concern you raised regarding our products and the claims associated with them but to rather provide an explanation as to why those claims were and have been made. As we stated from our first conversation, we are a manufacture of plant nutrition technology and it is our sincere intention to be 100% compliant and in harmony with the EPA and the laws of this country.

We have never perceived our company as a pesticide or fungicide supplier and quite frankly do not want to be perceived as such. Furthermore, your letter has given us cause to closely evaluate our own literature and website content to ensure that the claims we make are conveyed correctly. In the eye of the consumer, there should be no confusing or misleading statements that may cause anyone to view our company and its products for anything other than a source of nutritional products for the soil and plant.

Knowing our products, the ingredients used and the intended response for the end user, we see nothing on our labels that should cause any of our products to be classified as a pesticide. However, in light of your letter and our own close review of our website and the information contained therein, we do see the need to restate and remove some of the wording and claims to ensure no confusing or conflicting statements are made.





Example: Under the Bountiful Harvest Bio-Stimulant product we do list that the product contains "growth hormones" due to the fact seaweed extract is an ingredient used. However, we added the seaweed to the product for its

potassium and manitol sugar content, not for the growth hormones. No mention of growth hormones is listed on the product label and such statements ***will be removed entirely from the website and any published information that may be in circulation.***

This is one example of the actions we are taking to address your concerns. Our entire website is under review still and further changes are being made to ensure that all information conveyed is from a plant and soil nutrition basis, not pesticidal in nature. Given the Holiday Season and the fact that a number of our staff are vacationing we ask that you give us till January 15<sup>th</sup> to make all of the needed changes before we submit the new revised website for your review.

Furthermore, to ensure that any potential consumer who views our website is clear on the products and technology we offer, we intend to add a disclaimer statement that must be read and clicked on before accessing any specific product information the website contains. While we have not finalized the wording and would ask for your input on such, we foresee a statement similar to the following:

***( Name of Product ) is a nutritional supplement to the soil and plant. It is not a pesticide, fungicide or insecticide and is not intended to replace the role of such inputs by any grower who uses such products. Any statements or reports contained herein regarding the products benefits or mode of action stem from a nutrition response and effect in both the soil and plant.***

Again, we would ask for your input as to the wording you would like to see used to ensure the products are clearly represented properly to any potential consumer who may view them online.

We believe many of the bullet points mentioned in your notice are substantiated by mineral nutrition and many reputable studies and should not be viewed as pesticidal claims. However, we again acknowledge the need to remove and restate many of the points you have raised. With your cooperation and assistance, we will correct and avoid in the future, any confusing statements or claims that would cause our product to be viewed as a pesticide product in the eye of any potential consumer.







With your approval and while we wait for a response from Rachel Holloman's office, we will work toward making these changes and plan on communicating with you again on January 15<sup>th</sup> to submit and review the revised website that contains the changes and modifications we have listed herein.

If there are further steps and measures you need to see addressed at this time that we have overlooked in our response, please advise and we will continue to work cooperatively with you and your office to ensure they are addressed and that we are operating in complete compliance within the law's expectations you have for our company.

best regards,

Tim Tesreau  
Agri-Gro Marketing, Inc  
800-881-8801







To: "Agri-Gro Marketing, Inc" <tim@agrigo.com>,  
Cc: Rachel Holloman/DC/USEPA/US@EPA, "Stephen Smith / Agri-Gro Marketing, Inc." <stephen@agrigo.com>,  
Bcc: Chris Dudding/R7/USEPA/US,  
Subject: Re: Response to Notice of Warning- Agri-Gro Marketing

Dear Mr. Tesreau,

Thank you for contacting EPA with your preliminary plan of action and product statement. The product statement seems appropriate. Considering the Holidays and vacationing staff, your proposal of contacting EPA for further discussion until Jan. 15, 2013 is appropriate. If you need additional time past that date, please contact me. I see no problem if you need additional time. We look forward to reviewing your proposals, labels, website, etc. next year.

Happy Holidays !

Mark K. Leshner  
Environmental Scientist  
Toxics & Pesticides Branch  
Water, Wetlands, & Pesticides Division  
U.S. EPA Region VII  
11201 Renner Blvd.  
Lenexa, KS 66219  
(913) 551-7054  
lesher.mark@epa.gov

"Agri-Gro Marketing, Inc"

December 19, 2012

12/19/2012 02:10:18 PM

From: "Agri-Gro Marketing, Inc" <tim@agrigo.com>  
To: Mark Leshner/R7/USEPA/US@EPA  
Cc: Rachel Holloman/DC/USEPA/US@EPA, "Stephen Smith / Agri-Gro Marketing, Inc." <stephen@agrigo.com>  
Date: 12/19/2012 02:10 PM  
Subject: Response to Notice of Warning- Agri-Gro Marketing

December 19, 2012

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This is one example of the actions we are taking to address your concerns. Our entire website is under review still and further changes are being made to ensure that all information conveyed is from a plant and soil nutrition basis, not pesticidal in nature. Given the Holiday Season and the fact that a number of our staff are vacationing we ask that you give us till January 15<sup>th</sup> to make all of the needed changes before we submit the new revised website for your review.

Furthermore, to ensure that any potential consumer who views our website is clear on the products and technology we offer, we intend to add a disclaimer statement that must be read and clicked on before accessing any specific product information the website contains. While we have not finalized the wording and would ask for your input on such, we foresee a statement similar to the following:

*( Name of Product ) is a nutritional supplement to the soil and plant. It is not a pesticide, fungicide or insecticide and is not intended to replace the role of such inputs by any grower who uses such products. Any statements or reports contained herein regarding the products benefits or mode of action stem from a nutrition response and effect in both the soil and plant.*

Again, we would ask for your input as to the wording you would like to see used to ensure the products are clearly represented properly to any potential consumer who may view them online.

We believe many of the bullet points mentioned in your notice are substantiated by mineral nutrition and many reputable studies and should not be viewed as pesticidal claims. However, we again acknowledge the need to remove and restate many of the points you have raised. With your cooperation and assistance, we will correct and avoid in the future, any confusing statements or claims that would cause our product to be viewed as a pesticide product in the eye of any potential consumer.

With your approval and while we wait for a response from Rachel Holloman's office, we will work toward making these changes and plan on communicating with you again on January 15<sup>th</sup> to submit and review the revised website that contains the changes and modifications we have listed herein.

If there are further steps and measures you need to see addressed at this time that we have overlooked in our response, please advise and we will continue to work cooperatively with you and your office to ensure they are addressed and that we are operating in complete compliance within the law's expectations you have for our company.

best regards,

Tim Tesreau  
Agri-Gro Marketing, Inc  
800-881-8801

CC: Rachel Holloman  
Hard copy to be mailed



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RE: Notice of Warning Letter

Stephen Smith

to:

Mark Lesher

12/06/2012 10:46 AM

Hide Details

From: "Stephen Smith" <Stephen@agrigro.com>

To: Mark Lesher/R7/USEPA/US@EPA

1 Attachment



image002.gif

Hello Mark,

I want to thank both you and Chris for your time this morning. It was informative and very helpful and I certainly appreciate your patience in responding to our questions.

Tim will be in communication with Sherado Hobgood and we will definitely have a letter of response in the mail to your office no later than Dec. 20<sup>th</sup> once we determine the appropriate course of action.

Thanks again for your time.

X StephenEmailSig

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**From:** Lesher.Mark@epamail.epa.gov [<mailto:Lesher.Mark@epamail.epa.gov>]

**Sent:** Tuesday, December 04, 2012 1:15 PM

**To:** Stephen Smith  
**Subject:** Re: Notice of Warning Letter

Mr. Smith,

Thank you for your e-mail message. Sorry for the delay in my response, I have been out of the EPA Regional Office for a few days and now getting caught up on e-mails. Would you be available for a conference call on Thursday, Dec. 6, 2012, at 9:00 am. or 10:00 am. or 1:00 pm.? I would like to have one of our pesticides enforcement team sit in on the call and use a conference room for the call. Can you provide us with a telephone number so we can call you? Please let me know if this will work for you or if an alternate date would be better.

Mark K. Leshner  
Environmental Scientist  
Toxics & Pesticides Branch  
Water, Wetlands, & Pesticides Division  
U.S. EPA Region VII  
11201 Renner Blvd.  
Lenexa, KS 66219  
(913) 551-7054  
lesher.mark@epa.gov

"Stephen Smith" ---11/30/2012 12:06:54 PM---Hello Mark,

From: "Stephen Smith" <Stephen@agrigo.com>  
To: Mark Leshner/R7/USEPA/US@EPA  
Date: 11/30/2012 12:06 PM  
Subject: Notice of Warning Letter

---

Hello Mark,

I have received and reviewed your letter dated Nov. 15, 2012 regarding our companies products. I apologize for not responding sooner but with the Thanksgiving Holiday and other business travel, I am running a little behind. I will be out of the office next Monday and Tuesday as well on business but was hoping that there would be a good time I could schedule a phone conversation with you for Wednesday, Dec. 5<sup>th</sup> to discuss this matter and the actions our company needs to take to be in compliance with the EPA's standards and requirements for products like those we offer.

If you could please suggest a time that is good for you on Wednesday the 5<sup>th</sup> or even Thursday the 6<sup>th</sup>, I will arrange my schedule to give you a call. I will plan on calling you at 913 551 7054 unless there is another number you suggest I use.

Enjoy your weekend and I look forward to our conversation next week.

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\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*



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For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

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\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*





RE: Notice of Warning Letter

Stephen Smith

to:

Mark Leshner

12/05/2012 08:09 AM

Hide Details

From: "Stephen Smith" <Stephen@agrigro.com>

To: Mark Leshner/R7/USEPA/US@EPA

History: This message has been forwarded.

1 Attachment



image002.gif

Hello Mark,

Tomorrow at 9 am will work just fine for me and the best # to call me at is 573-996-7384.

Please feel free to include any other parties that you feel are necessary for our conference call but please be aware that the purpose for the call from my side is to ask questions and advice in order to determine what is the appropriate course of action we need to take in order to be in compliance with your standards and expectations.

Thank you for your call and I will look forward to speaking with you tomorrow morning.

X StephenEmailSig

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**From:** Leshner.Mark@epamail.epa.gov [mailto:Leshner.Mark@epamail.epa.gov]  
**Sent:** Tuesday, December 04, 2012 1:15 PM  
**To:** Stephen Smith  
**Subject:** Re: Notice of Warning Letter

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Mark K. Leshner  
Environmental Scientist  
Toxics & Pesticides Branch  
Water, Wetlands, & Pesticides Division  
U.S. EPA Region VII  
11201 Renner Blvd.  
Lenexa, KS 66219  
(913) 551-7054  
lesher.mark@epa.gov

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From: "Stephen Smith" <Stephen@agrigro.com>  
To: Mark Leshner/R7/USEPA/US@EPA  
Date: 11/30/2012 12:06 PM  
Subject: Notice of Warning Letter

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Enjoy your weekend and I look forward to our conversation next week.

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Notice of Warning Letter

Stephen Smith

to:

Mark Leshner

11/30/2012 12:06 PM

Hide Details

From: "Stephen Smith" <Stephen@agrigro.com>

To: Mark Leshner/R7/USEPA/US@EPA

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